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## **TALKING, VOTING AND VIOLENCE.**

### **Divisive Issues and the Limits of Democratic Deliberation.**

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## **ABSTRACT:**

Deliberative democrats claim that deliberation is the best procedure for handling moral conflicts.. Morally conflicting issues involve religion, race, language or ethnicity. Such issues raise questions concerning the boundaries of civic inclusion and national identities. Moral conflicts involved in these issues can assume an either/or character and are therefore potentially difficult to solve with procedures such as bargaining and compromise. Deliberative and democratic procedures are supposed to have the advantage of creating understanding and recognition through dialogue, provided that this dialogue meets normative criteria, such as reciprocity and reasonableness, publicity, the scope of accountability, various liberties and fair opportunities. In this paper I will focus on one of these criteria, that is reciprocity. My aim is not primarily to discuss reciprocity as a theoretical and normative concept, but to develop a more politically oriented model of deliberation that includes strategic behavior and institutional conditions. My general argument is that the claim that deliberation is the best procedure to handle moral conflicts does not always go together with the democratic ambitions that deliberative democrats hold as well. It is crucial to specify under what conditions moral conflicts are to be (re)solved by deliberation *and* democratization

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## 1. INTRODUCTION

Deliberation is now an immensely influential and widely used idea. This idea has not only gained foot in the international academic world of political studies, but also in political practices in various western countries. In both the academic and the political world, the phenomenon became manifest in the 1990s. Deliberative democrats are making two claims. The first claim is that deliberative procedures are superior in finding the right answers. In this view, deliberative democracy is necessary to avoid the pitfalls of technocratic policy-making. This claim has gained influence in studies concerned with policy learning.<sup>1</sup> Second, deliberative democrats claim that deliberation is best in handling moral conflicts. The arguments for this claim are that deliberative democracy will be more just to minorities and will help to create mutual understanding. As such, it is meant to correct majoritarian procedures. It is this second claim that is central to this paper about divisive issues. Divisive issues are *morally* conflicting issues. These issues involve religion, race, language or ethnicity. Such issues raise questions concerning the boundaries of civic inclusion and national identities. Moral conflicts involved in these issues can assume an either/or character and are therefore potentially difficult to solve with procedures such as bargaining and compromise. One of the central claims of deliberative democrats is that deliberation is a superior procedure in resolving moral conflicts. Compared to voting, bargaining, protesting or strategies of avoidance, deliberative procedures are supposed to have the advantage of creating understanding and recognition through dialogue. These procedures, however, should meet normative criteria, such as reciprocity and reasonableness, publicity, the scope of accountability, various liberties and fair opportunities. The definitions and practical implications of these criteria are still under discussion.<sup>2</sup> In this paper, however, my aim is not so much to join the debate about normative standards, but rather to develop a more politically oriented model of deliberation that includes strategic behavior and institutional conditions.

The claim that democratic deliberation is the best procedure to solve moral conflicts has been most elaborately defended by Gutmann and Thompson. A *moral* procedure like deliberation is the best way to resolve *moral* conflicts, the authors argue.<sup>3</sup> A second claim of deliberative democrats is that liberal democracy faces a deficit of meaningful participation in public debate. The domain of deliberation should be extended from the courts and other forums of high politics to everyday politics. The scope of citizen's participation should be widened to include public

debates about fundamental values. In sum, deliberation should not be restricted to elites, but should include citizens as well.

This essay discusses the limits of democratic deliberation. First, I will argue that there are risks involved in politicizing deliberation. These risks need to be assessed in relation to institutional and social contexts. Especially when moral conflicts revolve around ethnic, religious or racial cleavages, everyday politics and morality can be a dangerous combination. Trade-offs between democratic legitimacy on the one hand and stability on the other hand are to be faced when heated debates might run into violent conflicts. To resolve this dilemma, I will discuss some options that minimize the democratic costs. Secondly, I will address the question as to where the boundaries of the domain of everyday politics should be drawn. One of the main issues to be addressed in this respect is the relation between public debate and voting. Voting is a resource of political power that most citizens, and subaltern groups in particular, need in order to influence public debates. Voices without votes will be more easily deafened. Compared to other public forums - such as the meetings of legislatures, grassroots organizations or hospital committees -, election and referendum campaigns are the most inclusive sites of deliberation in democratic societies.<sup>4</sup> I will argue that in principal the domain of deliberation could be extended to include these locations of everyday politics, but only when stable democratic institutions and pluralist social relations predominate.

## **2. PUBLIC DEBATE AND ETHNIC, RACIAL OR RELIGIOUS ISSUES.**

The argument in favor of politicizing deliberation runs as follows. An adequate democracy must recognize that different groups do exist, and that these groups have divergent, potentially conflicting concepts of the common good. Although these differences cannot always be resolved through discussion, there must be scope for deliberation between groups about conflicting values. Any denial of group differences by elites or majorities that claim an impartial view of the common good involves ideological oppression. Groups, especially subordinated groups, need the opportunity to articulate independently their own identity and their particular perspectives. Politicizing group differences rather than bracketing them is therefore crucial to a genuine democratic public sphere.

Strategies of political elites to avoid recognition of group identities are democratically

speaking questionable. Even when political elites avoid issues directly related to racial, ethnic or religious identity with the respectable aim of protecting minorities, these strategies are highly inadequate in western democracies now that voters are increasingly distrusting and disloyal to political parties. Populist parties from the radical right side of the political spectrum have discovered that it is profitable to address these issues, exploiting at the same time the increasing distrust of political elites. These new parties seek to challenge the status quo by breaking gag rules and bringing up issues that vested parties consciously deleted from the agenda. The successes of these parties indicate that it is not realistic to remove identity issues from the political and public agenda. In fact, vested parties create excellent opportunities for radical populist parties when they try to realize consensus by forming cartels.<sup>5</sup>

Apart from the *ineffectiveness*, gag rules are also dubious in terms of *legitimacy*. Although vested parties may be inspired by good intentions, such as warding off racism, gag rules nevertheless have their drawbacks for democracy. In narrowing the agenda vested parties tend to make politics bland and boring, and most importantly they tend to deny legitimate expressions of beliefs.<sup>6</sup> Protest parties can be valued as a challenge for western democracies, when competition between political parties is stifled in the name of consensus, because these parties succeed in mobilizing parts of the electorate that were neglected or felt marginalized.<sup>7</sup> In this way they strengthen democratic representation, and that is a good thing.

Moreover, in a democracy the overall aim should be dissensus. Opposition and dissensus are the core principles of normal democratic politics. Political parties are expected to pursue competing agendas and dissent is only in exceptional circumstances regarded as disrespectful and disloyal. Accepting this principle means that we should treasure checks against monopolist tendencies that stifle debate. Gag rules should be relatively spare. Strategies of avoidance, such as deleting sensitive issues from the political agenda, cannot be but marginal. As a general principle, I take it that democracy demands optimal room for public debate.

### **3. THE RISK OF IDENTITY POLITICS**

Having said that, I will now identify some good reasons to avoid public discussion about ethnic, religious or racial conflicts. Deliberative democrats tend to endorse a general claim that public debate is preferable to keeping issues off the agenda, provided that public debate meets the

criteria of deliberation. Deliberation about these conflicts will be only successful, however, when the deliberating parties demonstrate reciprocal respect. This is particularly true when relations between groups are already polarized; in such situations relations can be further aggravated by the contempt groups show their adversaries. The security of groups and their peaceful coexistence is to a large extent based on reciprocal respect. It cannot be taken for granted, however, that the deliberating parties will show the necessary respect; political entrepreneurs and extremist groups in particular tend to frustrate this. Political entrepreneurs and extremist groups are the catalysts of polarization. The free market place of ideas provides opportunities for political entrepreneurs to frame issues in terms of conflicting identities and to stimulate fears for other groups for their own aggrandizement. It is not difficult to find examples of how political self-aggrandizement comes at the cost of mutual respect. Relations in Bosnia, for instance, have been further aggravated by the contempt Serbs have shown their Muslim adversaries, characterizing them as representing ‘all that is base, undesirable, and naturally subordinate’.<sup>8</sup>

Extremist groups can neither be expected to be open to persuasion by critical argument. It is utopian to expect them to use the ‘mild voice of reason’.<sup>9</sup> They consist of like-minded people talking to one another, and members identify themselves along some salient dimension. The group tends to define itself by contrast to another group. These groups can develop a strong and unified voice in public debate, but they cannot be expected to be open to persuasion by critical argument of outsiders.<sup>10</sup> Gutmann and Thompson’s requirements regarding reciprocity, for instance, principally exclude the arguments of groups such as Christian fundamentalists in practice.<sup>11</sup> Therefore, it has been argued that it would be better to lower the moral demands for public debates, as it is paramount to keep the debate with fundamentalists or extremists going as long as possible. Instead of demanding reasonableness, one could opt for a minimal willingness to bridge deep differences in moral values and to abide by formal democratic rules. Extremists like the Front National and the ‘Republican Front’ in France for instance do not meet requirements of ‘reasonableness’, but there may still be room for discussion based on more modest criteria.<sup>12</sup> Yet, even then there should be performative rules, like a minimum of mutual respect, in order for public debates to have any beneficiary effect.

The disagreement about the fine lines to be drawn with regard to fundamentalist groups is not, however, the most fundamental or only issue with respect to the high moral demands of deliberative democracy. Deliberative democrats add the claim that deliberation can be extended

to everyday politics. Gutmann and Thompson take a moderate position with regard to this claim. They would like to extend deliberation from high politics to middle politics, that is any setting in which citizens come together on a regular basis to reach collective decisions about public issues. Various deliberative democrats extend deliberation even further to large-scale public debates and large-scale voting procedures like referendums.<sup>13</sup> However, in large scale settings there are more opportunities for strategic behavior of political entrepreneurs and radical activists to add to distrust and intensify conflicts. In that case, it might be much more realistic to restrict deliberation about moral conflicts to ‘high’ politics; that is to small-scale interaction in highly institutionalized settings such as courts or parliamentary committees, where the highly demanding criteria of deliberation are backed up by legal and professional rules.

In the 1980s and 1990s, political entrepreneurs and activists have succeeded in various western democracies to politicize issues related to national identity in the 1980s and 1990s. Far right successes in this period have been closely related to politicizing immigration issues through (electoral) campaigns.<sup>14</sup> The success of making immigration politically salient can partly be ascribed to political elites and activists stimulating fears for immigrants. Foreigners or asylum seekers, on the other hand, hardly have the opportunity to develop their own group-based claims in the debates about immigration policies. They have not much to gain by the politicization of issues related to national identity, a politicization that has been mainly instrumental to electoral gain. In this context, the exclusion of the targeted group complicates the general argument in favor of politicizing deliberation.

In multinational or divided societies the risk of violent conflicts between ethnic groups is particularly serious. Yet, it should be noted that polarization does not necessarily lead to violence; divided countries manage sometimes to conduct politics peacefully notwithstanding the presence of political entrepreneurs and extremist groups that fuel polarization. Even in divided societies citizens can discuss highly divisive issues peacefully, as the examples of the Czech Republic and Slovakia or Belgium indicate. However, highly divisive issues that may cause the state to splinter generally have a high risk of escalating into violence. Highly divisive issues, therefore, raise most clearly the issue of limiting democratic deliberation.<sup>15</sup>

Deliberative democrats, I think, tend to overstretch the boundaries of the domain of deliberation. Gutmann and Thompson, for instance, acknowledge that gag rules can be legitimate, but only when these gag rules themselves are based on a deliberative agreement to disagree. They

are committed to resolve for instance religious disagreements in the public sphere, but they add that their commitment should be understood in the sense that the question of which disagreements should be so resolved is to be decided deliberatively.<sup>16</sup> *Agonic* theorists tend to stretch the domain of deliberation about divisive issues still further. These theorists have adopted the Greek term for contest, ‘agonism’, to emphasize the contestatory character of political activity. James Tully, for instance, emphasizes the positive effects of contestation. He argues that identities of multinational democracies should be worked out and decided on by citizens, because these discussions generate self-respect and contribute to the process of *citizenization*. Individuals and minorities become citizens of the nation by participating in discussion of the proposed identity of the multinational democracy.<sup>17</sup>

Notwithstanding the shades of these arguments in favor of democratic deliberation, they still seem too optimistic. Democratic deliberation is highly valuable, but violent conflict is a cost that weighs more heavily. Even gag rules that are the result of a status quo are to be accepted in such cases. Facing the dilemma between democratic legitimacy and stability, I would propose that democratic legitimacy has to be traded off against security and stability. Such a trade-off is not an easy one to make. In Malaysia for instance government banned public discussion of ethnic relations after the 1969 riots. This made Malaysia more peaceful, but less democratic. Government control of the press implied that the discrimination in favor of ethnic Malays could no longer be a subject of public debate.<sup>18</sup> Such a curtailment of civil liberties to guarantee peace is more acceptable when it can be regarded as a temporary measure. In the case of Malaysia, where democratization is difficult, these measures can only be legitimated when they go together with a commitment to restore civil liberties over time. When democratic institutions have become stable, public debates about inflammable issues become less risky.

In stable democracies it is in general possible to endorse the principle that threats of violence should not rule our political behavior. Democracy is not for cowards, but that is only true when democratic institutions are stable.<sup>19</sup> It would not be wise to stick to this adagio in new democracies. When democratic institutions are still weak, and when groups are polarized, the effects of deliberation about moral conflicts might be disastrous. Jack Snyder has pointed out that in circumstances of democratization, political elites tend to stir up group polarization, because nationalism is their main resource to mobilize voters. Political institutions, the rule of law and particularly the press need to be well developed in order to prevent that public debates about

issues related to national identity will escalate.<sup>20</sup>

Most of the states undergoing ethnic conflicts in the 1990s experienced a partial improvement in their political or civil liberties in the year or so before the strife broke out. Most of these conflicts occurred in states that were taking initial steps toward a democratic transition. The bloody ethnic conflicts in former Yugoslavia, the fighting between Armenians and the former Soviet republic of Azerbaijan, the war against the ethnic separatist Chechens in Russia, the genocide against the Tutsi minority in Rwanda, these are all examples of conflicts breaking out after these states had taken steps such as holding contested elections or allowing more press freedom. Where democracy was successfully consolidated, however, minority rights were increasingly being guaranteed through peaceful means. Democratization does not necessarily imply violence, as the 'velvet' revolutions in Eastern Europe prove. It makes much difference if there are already strong institutions that can channel conflict.<sup>21</sup> In the context of weak institutions, however, political elites exploiting popular rivalries exacerbate conflicts.<sup>22</sup> However, even vested democracies can sometimes be prone to violent conflicts when group identities are politicized. This is particularly the case in divided countries, countries characterized by sharp cleavages along the lines of ethnicity, religion or race where groups mobilize politically to enhance their interests.<sup>23</sup> These divisions may induce political instability, as in Northern Ireland. On the other hand, some democracies manage(d) peaceful coexistence even though they are (were) deeply divided, such as Switzerland, Austria, Belgium and the Netherlands. These and other examples have been part of extensive comparative analyses of vested democracies to assess how divided societies can best be managed peacefully. There seem to be three principal possibilities.

One is to 'depoliticize' cleavages by restricting the political domain. Lijphart's consociationalism is the most well known example of this strategy. It takes the politicization of group identities for granted, but restricts the political domain to the leaders of the national groups that govern as cartels of elites. Lijphart offers various guidelines for the elite-led pact between the groups, such as a minority veto, proportionality of parliamentary representation and substantial autonomy of the segmented groups. One could also add incentives for leaders of segmented voluntary associations to participate in multi-ethnic networks.<sup>24</sup> This strategy is the least democratic, and therefore not very realistic in western democracies. In these democracies the political domain has been extended substantially during the past decades, citizens have

become politically skilled and confident, and they have become used to a high degree of publicity and freedom of the press.

Another option is to 'depoliticize' group identities. Group identities are not infinitely malleable, but they are neither primordial, that is to say rooted in biological traits or centuries of past practice. The political salience of group identities can be altered by institutional design. Donald Horowitz argues for instance that one should aim at institutional arrangements that create incentives to align on the basis of crosscutting cleavages.<sup>25</sup> His idea is to temper the political salience of ethnic issues through incentives that induce political elites to recur to pluralist politics. Electoral systems for instance should have incentives for the formation of ethnically heterogeneous coalitions, such as a requirement of supermajorities larger than any single group can provide. Another proposal is to design constitutions in federal systems in such a way that they promote crosscutting cleavages, for instance through providing boundaries that cut across ethnic patterns of settlement. Horowitz somewhat narrowly focuses on constitutional and electoral systems. Apart from these institutional arrangements integrative policies can be pursued in other ways. Alternatives can vary from promoting media institutions that serve as a common forum for all communities to promoting intercultural contacts between ethnic organizations through conditional subsidies or other sticks and carrots. The bracketing of group differences by democratic means is an option that is to be preferred above an elitist strategy, but it still comes at a cost. It denies subaltern groups the opportunity to develop their own political voice.

John Dryzek has proposed a third option that could avoid this cost for subaltern groups.<sup>26</sup> He argues that deliberative democracy is still an option in divided societies on the condition that the political aspirations of ethnic groups can be tempered. If there is a competent press, deliberation can be safeguarded in an autonomous public sphere that is shielded from the state. The most effective way to do that is to separate decision-making from deliberation. Because voting easily becomes a deadly game in divided societies, it is essential to isolate deliberation about sensitive issues from voting and to downplay the significance of elections. Decoupled from voting, and more generally from constitutional aspirations, public debates about ethnic or other identities can still take place. This kind of depoliticization will reduce the risks of political elites trying to exploit group identities during elections and it will temper the political salience of these issues. In other words, this strategy should prevent that sharp cleavages become the foundation for political mobilization, while still allowing for (segmented?) public debates that revolve

around these differences. This seems an attractive option, but in order to be effective it would also demand some drastic restrictions of civil liberties. The least problematic is that issues directly related to group identities are being excluded as subjects of referendums. More difficult, however, is to temper electoral campaigns. This demands drastic control of the press in order to prevent that issues directly related to group identities are being discussed during elections.

#### **4. VOTING AND TALKING**

Take for instance the recent passage of several high profile initiatives in California, including Proposition 187 (which denied social services to illegal immigrants and their children in 1994) prop 209 (which eliminated affirmative action programs in public education, hiring and contracting in 1998) and prop 227 (which dismantled bilingual education in 1998). Should these initiatives be banned? They directly and explicitly targeted minority rights. Critics maintain that direct democracy is being used in these cases by white majorities and elites to tyrannize nonwhite minorities. Studies show that racial antipathy and fear indeed played a role in the white majority vote.<sup>27</sup> African-Americans, Latinos, and Asian Americans are all much less likely than whites to be on the winning side of the vote on these initiatives. Latinos in California particularly have much to worry when issues that target their rights are decided via direct democracy.<sup>28</sup>

This raises the issue whether a *vested* democracy like the American democracy is safe enough for political deliberation about ethnic or racial issues. If racial and ethnic cleavages divide American society, political deliberation about issues that directly target minority rights would not be such a good idea. Gag rules, such as excluding these issues from referendums and initiatives, are preferable in that case. However, the American case is far from obvious. The American constitutional structure is generally regarded as a pluralist system that prevents majorities from gaining control over government. Checks and balances like a large territory and federalism, separation of powers, two legislative houses, an autonomous presidency, an independent system of federal courts are the institutional means set up by the framers of the American constitution to realize that goal. This institutional context provides important safeguards. Judicial review, for instance, can check the potential threat of simple majoritarian decisions that referendums, and particular popular initiatives, may pose. The outcome of the vote is not the end of the initiative process. Several of the high-profile anti-minority initiatives in

California have been either overturned in the courts (Prop. 187) or not equally implemented across different jurisdictions (Prop. 227) Another safeguard that could effectively protect racial and ethnic minorities is a two-thirds majority requirement.<sup>29</sup> However, these institutional checks and balances may not be sufficient in a divided society. Hochschild, for instance, argues that the United States may be a pluralist society in the formal sense, but it is also a society with sharp cleavages<sup>30</sup>. The most worrying divide is still that between blacks and all other Americans, a divide that is explicitly or more subtly exploited in political campaigns.<sup>31</sup> Only with cautious optimism can the United States be regarded as being partway toward pluralism. In this context, this kind of *political* deliberation about racial issues in the context of referendums and elections should be regarded with considerable reservations.

## **5. DELIBERATIVE DEMOCRACY AND THE POLITICAL DOMAIN**

Ideally, that is to say in stable and pluralist democracies, voting and deliberation could go hand in hand. Separating voting from deliberation may be necessary in divided societies, but this is a strategy that is not costless for subaltern groups. Although these groups will still be able to develop their own voice, they cannot make much noise without political power. Voting is crucial to draw attention from the media and to force vested parties to engage in debate. Elections are the most usual means to reach this goal, but no less important are referendums and popular initiatives. Direct democracy provides excellent instruments to challenge the informal consensus and to redefine the political agenda.<sup>32</sup> Especially the referendums initiated by citizens, referred to as popular initiatives, have proved to be powerful weapons.<sup>33</sup> The initiative is a unique means for citizens and for opposition parties to attract public attention to an issue.<sup>34</sup>

Deliberative democrats, however, tend to be wary of voting in general and of direct forms of democracy in particular. In their view voting is not so much about power, but primarily an aggregative procedure. As a 'mere' aggregative procedure deliberative democrats tend to display a certain disdain for voting. Direct democracy is particularly suspect, as it is being identified with unreflective popular voting. Central to deliberative democracy is the idea that not all preferences can be automatically counted as equally valid. Preferences that are informed or more solidly based on empathy, or perhaps adjusted in the light of the intensity of other's expressed views, will be more deserving of respect than others. This emphasis on reflection rather than aggregation

raises the question as to what extent deliberative democracy implies an elitist concept of democracy.

Direct democrats have argued that the best way to realize equality is the principle of one person - one vote. Michael Saward for instance argues that equal voting is critical to realize inclusion and as such it is essential for any model of democracy. Equal voting protects the democratic inclusion of those who have the minimally required capacities to vote, but who do not necessarily meet the requirements of having deliberative preferences.<sup>35</sup> Although many deliberative democrats also endorse the principle of inclusion, they are much more hesitant to subscribe to the principle that voting is crucial to any model of democracy. For deliberative democrats, the most viable option is to follow Madison and to endorse the principle of equal voting as a procedure to elect representatives. The elected representatives will then take care of the deliberative dimension of democratic politics. In this view, representative democracy provides the optimal conditions for deliberation, with voting reduced to the role of selecting the participants of deliberative forums like parliament. As such it opens up the possibility of a division of labor between lay citizens who vote and professional, competent politicians who deliberate.<sup>36</sup>

Deliberative democracy appears to be a stronghold for representative democracy against the rising tide of direct democracy, but I believe that deliberative democrats should develop a position that opens the door more widely for direct democracy. As I said before, voting is an important resource of power. Voting is not only important as a procedure to select political representatives; it is also a powerful resource for subaltern groups to influence public debate. Referendums and elections are particularly important for agenda setting in situations where competition and open debate is stifled. Moreover, voting is not necessarily a purely aggregative procedure. The contrast between direct democracy and deliberation is less stark than deliberative democrats believe.

## **6. FROM VOTING TO TALKING**

The general contrast that is drawn between direct democracy and deliberation is too crude. The procedures that are assembled under the label direct democracy differ substantially. Direct democracy refers to various types of referendums and initiatives. Some are more 'deliberative'

than others.

Not all types of direct democratic procedures are primarily about decision-making. There are referendums and initiatives that are partly or mainly about agenda setting. Such procedures should be looked upon much more favorably by deliberative democrats, because agenda setting is an essential part of deliberation. In case of stifled competition, agenda setting through popular initiatives can function as an effective check against oligarchic tendencies among vested parties. It is in principle an instrument to realize a relatively open (or autonomous) public sphere. One example is the Austrian advisory initiative, an initiative that is not directly about decision making through voting, but primarily about agenda setting. These initiatives allow citizens to get an issue on the agenda of parliament as a formal bill. It resembles a petition, but requires a specified number of citizens or supporters and results in a formal bill that requires full parliamentary treatment.<sup>37</sup> In contrast to popular initiatives in Switzerland and in some US states it is not the first step towards a referendum.<sup>38</sup> These advisory initiatives are potentially effective instruments to influence the parliamentary agenda, because initiatives attract considerable media attention. Normally, a great number of media reports will be published immediately before the official start of an initiative. It is not only an attractive instrument for groups of citizens, who have no other way of introducing bills, it is also attractive for opposition parties.

Note also that not all types of referendums/initiatives contribute to digital voting by presenting a yes/no choice. Referendums that do present such simple choices tend to intensify moral conflicts. Yes/no referendums are not very helpful to solve issues that are ridden by conflicting values. There are alternatives, however, that present various options and /or that can combine voting with reflection. Examples are choice questionnaires and preferendums. A preferendum, for instance, asks voters to rank several options.<sup>39</sup> It is a non-majoritarian voting procedure that lays down certain guidelines for the conduct of the debate, which precedes the vote. It requires the participants to agree to elect a team of independent, non-voting consensors whose task is to draw up a list of options. The voter is asked to rank the options, with the aim to find the option that has received the most points, or i.e. the highest level of consensus. Another alternative is the choice-questionnaire, a poll that assists respondents/voters to weigh arguments for and against several options.<sup>40</sup>

Most important to consider, however, is that referendums can be incentives to deliberation. For instance, recent steps in the development of the European Union, like the introduction of the

EMU or the extension of the EU, have hardly been discussed publicly in countries where no referendum was held. Referendums are not only good instruments to insert issues into the agenda, they can also make deliberation more contestative by creating pressures towards opening up deliberative networks for non-represented groups. Especially when the results of referendums or initiatives are unpredictable for vested parties, they can become an incentive for elites to share power. In Switzerland for instance direct democratic procedures have contributed to the formation of power sharing structures.<sup>41</sup>

In sum, the deliberative potential of direct democracy is considerable, but this still leaves open the question of how difficult it might be to realize these deliberative dimensions of direct democracy. It is noteworthy that nowadays direct democracy attracts most support from those who are least educated and least interested in politics. These are also the voters that support protest parties.<sup>42</sup> This raises the question as to whether the voters that are most supportive of direct democracy will possess the skills required to exploit its deliberative potential. This is an old argument against the expansion of democratic rights, and one should be careful not to exaggerate the skills and opportunity costs that direct democracy demands. Voters can derive voting-cues from a variety of resources.

However, the opportunities for new political elites to exploit the dissatisfaction of less skilled and less interested voters are relatively great. The new populist parties do not just *respond* to a new demand, they also *shape* preferences. Particularly in the case of populist parties the role of political *entrepreneurship* is a prominent one.<sup>43</sup> Political entrepreneurship is a distinctive capacity to discern what would make voters feel better off. It plays an important role in the new populist politics. Just as a market entrepreneur imagines products that he believes consumers would buy if only they were available, so the political entrepreneur imagines policies that voters will applaud if they are only introduced.

Recent research in public opinion suggests that citizens do not have fixed issue positions. Each citizen has a range of views, not a single fixed one. As a consequence, persuasive communication can be highly relevant. Particularly if a person has little prior information, then information reaching him will have a large effect. The new protest parties seem particularly good in shaping preferences by combining marketing techniques with strong leadership and a strong commitment to simple and clear positions. These are particular favorable conditions for influencing the preferences of that part of the electorate that is least interested in or aware of

politics.<sup>44</sup> For these reasons, direct democracy is not without its risks. In particular procedures of direct democracy that do not firmly restrict the disproportionate influence of powerful political entrepreneurs, who acquire much scope to shape preferences through financing highly expensive campaigns, this kind of contestation cannot be univocally acclaimed.

## **7. DELIBERATION-AS-DEBATE IN CONTEXT**

Is a deliberative approach to resolving moral conflicts dangerously naive? I have argued that in order to be realistic, deliberative democracy first of all should take account of institutional contexts. In the real world of politics, institutional features such as governments, legislatures, parties, election systems, courts, interest group systems and the media play a crucial role in shaping public debates. It makes all the difference whether moral conflicts are to be solved by deliberation in vested or new democracies. Moreover, it is crucial to have institutional checks and balances, such as independent courts, which can correct majority decisions. Deliberative criteria like reciprocity and publicity can only be guaranteed when there are well – established, professionally and juridical backed-up rules for the media, which help to check the role of political entrepreneurs and radical activists. Secondly, the beneficial effects of deliberation depend of the scale of deliberation. The idea that deliberation about moral conflicts can be extended from high politics to middle or low politics can only be granted under conditions of democratic stability and institutional checks and balances. Moreover, social relations such as the racial or ethnic structures of societies affect deliberation about issues related to group identities. Socially and politically segmented groups will have much more difficulty in solving moral conflicts through deliberation. To account for the effects of power and the risks of violence, deliberative theory needs to develop an eye for the institutional and social varieties of democracies. Therefore, deliberative democracy should be more than a theory about deliberation-as-debate and join hands with comparative political science.

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<sup>1</sup> Cf. J.Cohen and C.Sabel, ‘Directly-Deliberative Polyarchy’ in *European Law Journal*, 3, 1997; J. Forester, *The Deliberative Practitioner. Encouraging Participatory Planning Processes*,

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Cambridge, Mass. MIT Press, 1999; F. Fischer, *Evaluating Public Policy*, Chicago, Nelson – Hall, 1995

<sup>2</sup> The role of reasonableness and civility for instance is far from clear yet. See J. Rawls, ‘The Idea of Public Reason Revisited’ in *Collected Papers*, Cambridge Ma; Harvard University Press, 1999; I.M. Young, *Inclusion and Democracy*. Oxford University Press 2000; J. Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford University Press, 2000.

<sup>3</sup> A. Gutmann, D. Thompson, *Democracy and Disagreement*. Cambridge, Mass., Belknap Press, 1996. Sometimes Gutmann and Thompson defend the weaker claim that their commitment to resolve moral issues in the public sphere only implies that the question of which disagreements should be so resolved is to be decided deliberatively. See A. Gutmann, D. Thompson, ‘Democratic Disagreement’ in S. Macedo (ed.), *Deliberative Politics. Essays on Democracy and Disagreement*, New York/Oxford, Oxford University Press, 1999, p.250

<sup>4</sup> Gutmann and Thompson widen the scope of political deliberation to the forums of legislatures, grassroots organizations and hospital committees. It is not clear whether they also would like to extend the concept of a public forum to electoral and referendum campaigns. More generally, the boundaries of what they call ‘middle politics’ remain rather vague. Cf. R. Hardin, ‘Deliberation: Method, not Theory’ in S. Macedo, *Deliberative Politics*, p.114. Jane Mansbridge defends a much broader domain of political deliberation by extending it to everyday talk, including any discourse in which human beings make sense of their common situation. J. Mansbridge, ‘Everyday Talk in the Deliberative System’ in S. Macedo, *Deliberative Politics*, 211-243

<sup>5</sup> H. Kitschelt, *The Radical Right in Western Europe. A Comparative Analysis*. Ann Arbor, University of Michigan Press, 1995; H.G. Betz and S. Immerfall (red.), *The New Politics of the Right*, New York: St. Martin's Press, 1998

<sup>6</sup> S. Holmes, ‘Gag rules, or the politics of omission’ in J. Elster and R. Slagstad (eds.) *Constitutionalism and Democracy*. Cambridge, Cambridge University Press, 1988, pp.19-58

<sup>7</sup> Cf. Y. Mény, Y. Surel (eds.), *Democracies and the Populist Challenge*, Houndmills/New York, Palgrave, 2002.

<sup>8</sup> D.A. Lake, D. Rothchild (eds.), *The International Spread of Ethnic Conflict. Fear, Diffusion, and Escalation*. Princeton, Princeton University Press, 1998, p.19

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<sup>9</sup> J.S. Dryzek, 'Alternatives to Agonism and Analgesia: Deliberative Democracy in Divided Societies'. Paper presented at the Conference on *Deliberative Democracy and Sensitive Issues*, Amsterdam 25-26 March 2003

<sup>10</sup> Cf. M. E. Warren, *Democracy and Associations*. Princeton, N.J.: Princeton University Press. 2001

<sup>11</sup> S. Fish, 'Mutual respect as a Device of Exclusion' in S. Macedo (ed.) *Deliberative Politics. Essays on 'Democracy and Disagreement'*. New York, 1999, 88-103; J. S. Dryzek, 'Alternatives to Agonism and Analgesia: Deliberative Democracy in Divided Societies'. Paper presented at the Conference on *Deliberative Democracy and Sensitive Issues*, Amsterdam 25-26 March 2003.

<sup>12</sup> See: M. Fennema and M. Maussen, 'Dealing with Extremists in Public Discussion: Front National and "Republican Front" in France', *The Journal of Political Philosophy*, 2002, 1, 379-400

<sup>13</sup> See: I.M. Young, *Inclusion and Democracy*. Oxford University Press 2000; J. Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford University Press, 2000. J. Fishkin, *The Voice of the People*. New Haven, Yale University Press, 1995

<sup>14</sup> R. Karapin, 'Far Right Parties and the Construction of Immigration Issues in Germany' in M. Schain, A. Zolberg, P. Hossay (eds.), *Shadows over Europe: The Development and Impact of the Extreme Right in Western Europe*, Basingstoke, Palgrave, 2002, 187-223

<sup>15</sup> Cf. R.E. Goodin, 'Political Unspeakability. The Limits, and Possibilities, of Political Deliberation'. Paper presented at the Conference on *Deliberative Democracy and Sensitive Issues*, Amsterdam 25-26 March 2003

<sup>16</sup> Gutmann and Thompson, 'Democratic Disagreement', 250

<sup>17</sup> J. Tully, 'Introduction' in A.G. Gagnon, J. Tully, *Multinational Democracies*, Cambridge, Cambridge University Press, 2001, 1-35; Cf. Dryzek, 'Alternatives to Agonism'.

<sup>18</sup> D. Horowitz, 'Making Moderation Pay' in J. Montville (ed.), *Conflict and Peacemaking in Multiethnic Societies*. New York; Lexington 1991, 463

<sup>19</sup> Definitions of a mature democracy vary from the 'two turnover rule' - that is when power has changed hands twice as a result of free and fair elections - to achieving a high score on all democratic indicators, including civil liberties and minority rights.

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<sup>20</sup> J. Snyder, *From Voting to Violence. Democratization and Nationalist Conflict*. London, W.W. Norton & Company, 2000; Lake and Rothchild, 1998)

<sup>21</sup> Cf. T. Skocpol, *States and Social Revolutions. A Comparative Analysis of France, Russia and China*, Cambridge University Press, 1987

<sup>22</sup> S. P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, Norman OK, University of Oklahoma Press, 1991

<sup>23</sup> Lijphart mentions the following criteria to identify divided countries: segments that can be identified exactly by size, that have political, social and economic boundaries that coincide and that receive the same level of voting support from election to election. A. Lijphart, 'The Evolution of Consociational Theory and Consociational Practices, 1965-200' in *Acta Politica*, 37, Spring/Summer 2002, 11-23

<sup>24</sup> M. Fennema and J. Tillie (2001), 'The paradox of democratic governance', Paper presented for the workshop *Rescuing Democracy: The Lure of the Associative Elixir*. ECPR Joint Session of Workshops, Turin, March 2001.

<sup>25</sup> D. Horowitz, 'Making Moderation Pay', 451-76

<sup>26</sup> Dryzek, *Alternatives to Agonism*.

<sup>27</sup> They make up a very small number of the initiatives, less than 5 % of all statewide initiatives over the last 30 years in the US. See B. S. Gamble, 'Putting Civil rights to a Popular Vote', in *American Journal of Political Science* 41, 1997, pp.245-69; Z. L. Hajnal, E. R. Gerber, H. Louch, 'Minorities and Direct Legislation: Evidence from California Ballot Proposition Elections, in *The Journal of Politics*, Vol.64 No 1 Feb. 2002, pp.154-177. See also Z. Hajnal, H. Louch, *Are there Winners and Losers? Race, Ethnicity, and California's Initiative Process*, Public Policy Institute of California, 2001.

<sup>28</sup> Hajnal, Gerber and Louch, 'Minorities and Direct Legislation', p. 171. Most blacks, Latinos and Asian Americans are nevertheless more supportive of initiatives than whites, but they would also support a move to a two-thirds majority vote requirement.

<sup>29</sup> J. L. Hochschild, 'The Possibilities for Democracy in America' in T. K. Rabb and E. N. Suleiman (eds), *The Making and Unmaking of Democracy*. New York: Routledge, 2003, 328-351

<sup>30</sup> Hajnal and Louch, *Are there Winners and Losers*, p.12

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<sup>31</sup> There is probably not much difference between representative and direct democracy in this respect. Cf. also M. Warren, 'What Can and Cannot be Said: Deliberating Sensitive Issues', paper presented at the Conference on *Deliberative Democracy and Sensitive Issues*, Amsterdam 25-26 March 2003

<sup>32</sup> W.C. Müller, 'Plebiscitary agenda-setting and party strategies. Theoretical Considerations and Evidence from Austria' in *Party Politics*, Vol.5 No3, 1991, p. 308

<sup>33</sup> M. Setälä, 'Referendums in Western Europe- A Wave of Direct Democracy?' in *Scandinavian Political Studies* Vol.22-No.4, 1999, pp.327-340.

<sup>34</sup> W.C. Müller, 'Plebiscitary agenda-setting, 303-315

<sup>35</sup> M. Saward, 'Making Democratic Connections: Political Equality, Deliberation and Direct Democracy' in *Acta Politica*, Vol. 36, Winter 2001, 361-380

<sup>36</sup> G. Brennan and A. Hamlin, 'On Political Representation' in *British Journal of Political Science*, 29, 1999, 109-127. Deliberative democrats like Fishkin on the other hand hold that the principle of equality is better served by selecting representatives for deliberative forums ( like the so-called deliberative poll) at random.

<sup>37</sup> W.C. Muller, Plebiscitary agenda-setting, 304

<sup>38</sup> The Swiss initiative is sometimes called 'indirect' to distinguish it from the 'direct' initiatives of the US states, which is submitted to the popular vote without the intervention of the legislature. D. B. Magleby, *Direct legislation. Voting on ballot propositions in the United States*. Baltimore, John Hopkins University Press. 1984, p.35

<sup>39</sup> The preferendum has been developed by the De Borda Institute. See P.J. Emerson, *Preferendum Social Survey*, The De Borda Institute, 1998

<sup>40</sup> The choice questionnaire has been developed by Saris, Neijens and De Ridder for use with the general Social debate in the Netherlands and it has been used with several local referendums. See P. Neijens and V. Price, Deliberative polls: toward improved measures of informed public opinion in: *International Journal of Public Opinion Research*, Vol 10, No 2. 1998. See also T. Akkerman, M. Leyenaar, K. Niemoller, 'Reforming Government in the Netherlands', Paper presented at the ESF Exploratory Workshop, Nijmegen, 8-10 November, 2001.

<sup>41</sup> The introduction of local referendums in the Netherlands in the 1990s also created pressures for political parties to involve more groups and citizens in deliberative policy-making. When two

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important corrective referendums in Amsterdam and Rotterdam about merging the municipalities in new, regional governments resulted in the rejection of decisions unanimously accepted by the respective City Councils, this came as a shock. Those who had long prepared these decisions, investing much time and money, were completely taken by surprise that their policies lacked all public support. This experience contributed to an understanding that wider public involvement in informal deliberative forums was to be pursued.

<sup>42</sup> R. J. Dalton, W. Burklin, A. Drummond, 'Public Opinion and Direct Democracy' in *Journal of Democracy*, Vol 12. No. 4, Oct. 2001, 141-153.

<sup>43</sup> Brennan and Hamlin, 'On Political Representation'; See J.R. Zaller, *The nature and origins of mass opinion*, Cambridge University Press, 1992, 267;

<sup>44</sup> Zaller, *The nature and origins of mass opinion*, 155-8; cf. Muller, 'Plebiscitary agenda-setting', 308